

**CITY OF MADISON  
ETHICS BOARD**

**October 1, 2014**

**Advisory Opinion** - Regarding disclosures or recusals related to Alder Mark Clear's ownership of Clear Solutions, LLC, which consults for Accelerate Madison, Inc., a program of the Greater Madison Chamber of Commerce

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Alder Clear requested an advisory opinion from the Ethics Board regarding disclosure or recusal where he has a financial interest in a business that has a client an entity that lobbies before the City Council or other City bodies. Alder Clear is the sole owner of Clear Solutions, LLC. Clear Solutions, LLC has provided consulting services to Accelerate Madison, Inc. ("Accelerate") a non-stock corporation, that is an association of digital technology companies. On May 5, 2014, Accelerate was acquired by the Greater Madison Chamber of Commerce ("Chamber"). Alder Clear has served as Executive Director of Accelerate and has been its only officer.

When Alder Clear originally sought this advisory opinion, he stated that Accelerate would become a subsidiary program of the Chamber, but it would retain its separate corporate identity and status. However the facts changed before the July meeting of the Ethics Board. Accelerate Madison, Inc is now to be phased out as a separate corporate entity and Accelerate Madison will become a program of the Chamber. This means that the consulting contract for Clear Solutions, LLC ("Clear Solutions") will be directly with the Chamber and not with Accelerate. Alder Clear has stated that his title will still be Executive Director, but that title no longer means that he is an officer. Alder Clear has also stated that Accelerate will be a brand under which the Chamber operates programs. Clear Solutions will still be receiving 30-40% of its income from the contract, but the contract will be directly with the Chamber. Accelerate still exists as a separate entity, but will eventually be dissolved.

The Ethics Board met on June 4, 2014 and on July 30, 2014. Alder Clear was present and spoke to the Board at both meetings.

The Ethics Board concludes that it has jurisdiction because Alder Clear is an "incumbent" under Sec. 3.35(3) MGO, and because he properly requested this advisory opinion, pursuant to Sec. 3.35(11) MGO. The Board has determined that it will separately respond to the following sets of questions for both Alder Clear's relationship with Accelerate and his relationship with the Chamber. Regarding Accelerate, the Board understands that it is to be eventually dissolved. But because it was still in existence at the time of the Board's July 30<sup>th</sup> meeting, the Board chooses to give its opinion on Alder Clear's relationships with both Accelerate and the Chamber. When Accelerate is phased out the relationship with it will become irrelevant and the Board's advice regarding Alder Clear's relationship to the Chamber will be controlling.

**Part I. Advisory Opinion regarding Alder Mark Clear and Accelerate Madison, Inc.**

The Board feels that the following questions listed below still should be answered because Accelerate Madison, Inc had not yet been dissolved as of the July 30<sup>th</sup> meeting. For each of these questions, the Board assumes that the facts were those presented at

the June 4<sup>th</sup> meeting. In the event that Accelerate is dissolved as a separate entity, these questions become moot.

1.

- a. Is Accelerate an entity with which Alder Clear is "Associated"?

Alder Clear does not own an equity interest in Accelerate. He serves as the Executive Director of Accelerate. The Executive Director of a nonprofit is equivalent to the Chief Executive Officer. The Board concludes that under the circumstances described at the June 4, 2014 meeting, that Alder Clear would be associated with Accelerate because he is an officer of Accelerate, pursuant to the definition in Sec. 3.35(2)(b) MGO.

- b. Is Accelerate an entity in which Alder Clear has an "Economic or Financial Interest"?

Alder Clear receives income from Accelerate. According to the minutes, Alder Clear stated that Clear Solutions receives 30-40% of its income from Accelerate. The Board concludes that Alder Clear has an economic or financial interest under the circumstances described at the June 4, 2014 meeting, pursuant to Sec. 3.35(2)(c) MGO.

- c. Is Accelerate an entity in which Alder Clear has a "Personal Interest? Personal interest means "...greater than nominal"... "direct or indirect"... "arising from close business... associations," under Sec. 3.35(2)(f) MGO. The Board concludes that under this definition, Clear's close business association with Accelerate, under the circumstances described at the June 4, 2014 meeting, constitutes a personal interest in Accelerate.

2. Is Alder Clear required to disclose if matters come before the Common Council on which the Accelerate has lobbied?

An Alder who has a financial or personal interest in a matter before the Common Council shall disclose "the nature and extent of such interest.", under Sec. 3.35(5)(f) MGO. Because the board concludes that Alder Clear had both a financial and a personal interest in Accelerate, under the circumstances described at the June 4, 2014 meeting, Alder Clear will need to disclose his relationship with Accelerate. However, if Alder Clear disqualifies himself from discussing or voting on such a matter, then pursuant to Sec. 3.35(5)(f)1, MGO, Alder Clear need not disclose the nature and the extent of his interest in the matter.

3. Is Alder Clear required to disclose if matters come before the Common Council on which the Accelerate has lobbied?

An Alder must disqualify him or herself from discussing or voting on a matter that involves their financial or person interests to the extent that such interests "...appear to conflict with... official duties or would impair or reasonably be expected to impair... independence of judgment or actions." Sec. 3.35(5)(f)1, MGO. If matters relating to Accelerate, under the circumstances described at the June 4, 2014 meeting, were to come before the Council, then the Board

recommends that Alder Clear recuse or disqualify himself from discussing or voting on the matter.

## **Part II. Advisory Opinion regarding Alder Clear and the Greater Madison Chamber of Commerce.**

At the July 30, 2014 hearing, Alder Clear stated that the situation had changed and the result was that Alder Clear's company, Clear Solutions would be working directly for the Chamber. Accelerate would be dissolved and Accelerate would become a brand or program of the Chamber. The consulting contract of Clear Solutions will be directly between Clear Solutions and the Chamber. Alder Clear will continue to be the sole owner of Clear Solutions and will retain the title of Executive Director of the Accelerate program, but Accelerate will lose its status as a separate legal entity.

1. a. Is the Chamber an entity with which Alder Clear is "Associated"?

Alder Clear does not own an equity interest in the Chamber. Based on Alder Clear's statements it appears that his role as Executive Director of Accelerate will be a job title and not an officer of the Chamber. Given this information, Alder Clear is not associated with the Chamber.

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- b. Is the Chamber an entity in which Alder Clear has an "Economic or Financial Interest" under Sec. 3.35(2) (c) MGO?

Alder Clear will be receiving income from the Chamber. According to his statements to the Board, Alder Clear stated Clear Solutions will be receiving 30-40% of its income from the Chamber as a consultant. An economic or financial interest means a business in which relates to the person's source of income, or which is apt to affect the welfare or material resources of the person. Sec. 3.35(2)(c) MGO. Therefore, the Board concludes that Clear will have an economic or financial interest in the Chamber, under the circumstances described at the July 30, 2014 meeting, pursuant to Sec. 3.35(2)(c) MGO.

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- c. Is the Chamber an entity in which Alder Clear has a "Personal Interest"?

Personal interest means "...greater than nominal..." "direct or indirect" ... "arising from close business... associations." Sec. 3.35(2) (f) MGO. The Board concludes that under this definition, Clear's close business association with the Chamber, where Clear Solutions is retained by the Chamber under the circumstances described at the July 30, 2014 meeting, constitutes a personal interest in the Chamber.

2. Is Alder Clear required to disclose if matters come before the Common Council on which the Chamber has lobbied?

An Alder who has a financial or personal interest in a matter before the Common Council shall disclose "the nature and extent of such interest." Sec. 3.35(5)(f)1, MGO. Because the board concludes that Alder Clear has both a financial and a personal interest in the Chamber, under the circumstances described at the July 30, 2014 meeting, Alder Clear will need to disclose his relationship with the Chamber, when he takes official actions on matters affecting the Chamber.

However, if Alder Clear recuses or disqualifies himself from discussing or voting on such a matter, then pursuant to Sec. 3.35(5)(f)1, MGO, Alder Clear need not disclose the nature and the extent of his interest in the matter.

3. Is Alder Clear required to recuse himself regarding matters that come before the Common Council on which the Chamber has lobbied?

An Alder must disqualify him or herself from discussing or voting on a matter that involves their financial or personal interests to the extent that such interests "...appear to conflict with...official duties or would impair or reasonably be expected to impair...independence of judgment or actions." Sec. 3.35(5)(f)1 MGO . Alder Clear's Limited Liability Company's consulting contract with the Chamber involves his financial or personal interests and the Board concludes that it appears to create a conflict and that it may be reasonably expected to impair his independence of judgment or actions on matters relating to the Chamber. If matters on which the Chamber has lobbied come before the Council, then the Board recommends that Alder Clear disqualify himself from discussing or voting on the matter.